IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7065 OF 2005

WITH

CRIMINAL APPLICATION NO.7066 OF 2005

Shivaji Shankar Jathar .. Applicants

Versus

The State of Maharashtra .. Respondent

Mr.Milind Deshmukh for applicants

Mr.K.V.Saste, A.P.P. for State

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th November 2005.

P.C.

. Heard Mr.Deshmukh for the applicants and

Mr.Saste, A.P.P. for respondent - State.

2. Applicant, as far as first application is concerned, is arrayed as accused No.3 in C.R.No.34 of 2005 registered under section 354, 376, 504, 506 read with Section 34 of I.P.C. and under section 3(1)(ii) and 3(2)(v) and (vi) of the Scheduled Caste and Scheduled Tribes Prevention of Atrocities Act. One Reshma Natha Danane (now deceased) had filed a complaint on 10th June 2005 against one Amol Bhimrao Bodhale and his father Bhimrao as well as present applicant. On 13th June 2005 she gave a supplementary statement and alleged that the said Amol had committed an offence of rape punishable under section 376 of I.P.C. Applicant had preferred criminal misc.application No.67 of 2005 for grant of anticipatory bail. Additional Sessions Judge, Malshiras by order dated 1st July 2005 was pleased to grant anticipatory bail for one month. Subsequently, the State moved

Misc.Application No.85 of 2005 for cancellation of this anticipatory bail which was allowed. The application of applicant for regular bail after the charge sheet was filed has been rejected.

3. Mr.Deshmukh appearing in support of this application contended that as far as F.I.R. is concerned, all that is alleged against applicant is that along with Bhimrao as well as his son, he visited the house of victim and threatened them after abusing them. Alleged abuses hurled at the family members pertained to their caste.

4. As far as second applicant is concerned i.e. Application No.7066 of 2005 is concerned, the same pertains to an event after the anticipatory bail application of the present applicant was granted inasmuch as the deceased is alleged to have been strangulated by the applicant as well as other accused. An offence of murder has been registered. The said C.R. is

registered as 39 of 2005. It is contended by Mr.Deshmukh that as far as second incident is concerned, admittedly, the body of deceased was found hanging with rope. She was alone at that time. The allegation is that brother of the deceased was informed by one Adinath Sahebrao that present applicant was seen near the house of the deceased and in fact he was passing along side the stream towards his (applicant's) house. It is contended by Mr.Deshmukh that this is the only allegation pertaining to the applicant.

5. Grievance of Mr.Deshmukh is that after the charge sheet is filed under C.R.No.39 of 2005, an application was made for regular bail. The changed circumstances viz., filing of charge sheet and non impleading of applicant was specifically pointed out. Submissions were made on that basis.

6. With the assistance of Mr.Deshmukh as

well as A.P.P. I have perused the order which is common order in criminal misc.application No.120 of 2005 and 118 of 2005. Criminal Application No.120 of 2005 is preferred in C.R.No.39 and Criminal Application No.118 of 2005 is preferred in C.R.No.34 of 2005 i.e. the earlier C.R. Although both C.Rs. allege offence under the Atrocities Act coupled with those noted above, it is common ground that charge sheet is filed in both cases. Learned Judge while rejecting the applications has observed thus:-

> "4. ....It has further come in the evidence that the applicant Shivaji Jathar has threatened the parents of the prosecutrix and deceased Reshma. There are witnesses who had seen accused Shivaji Jathar while going from the house of complainant P.M. Notes show about pregnancy of the deceased. If we read earlier Crime 34/05 wherein there are

allegations made against applicant Shivaji Jathar and also involvement of Bhimrao Bodhale in commission of rape and subsequent threat by Shivaji Jathar Deputy Sarpanch for not lodging police complainant and commission of subsequent incident, the fact of bolting room from outside, fact of going away from the house of complainant and the fact that Bhimrao Bodhale was father of accused, Amol, who had committed rape on the prosecutrix Reshma, there is clear case of prima facie involvement of the applicants in the crime."

"6. However, the applications opposed by AGP Shri Barge on the ground that there are strong circumstances on record for holding that there was a crime committed by the applicants of serious nature and their involvement in crime.

> So the applications be rejected. It is submitted that mere submission of the charge sheet is not sufficient. Considering the nature of the offence that too on the member of Scheduled Caste and Scheduled Tribe, and considering the gravity of the offence. I say that this is not fit case for grant of bail. Hence, the application stands rejected."

7. Learned Judge has failed to consider the well settled position that filing of charge sheet is changed circumstance. If any reference is necessary to this well settled principle, a reference to what this Court has observed in a recent decision reported in 2004 (4) M.L.J. 415 is enough. Learned Judge has failed to notice this well settled principle. He was obliged to consider the application which was filed after charge sheet on its own merits and in accordance with law. All that he has done in paras 4 and 6

of the order passed on the bail applications is reproduction of contents of the C.Rs. and on that basis, held prima facie involvement of the applicant in crime. He has, however, observed nothing as far as changed circumstances viz., filing of charge sheet and what would be their effect on the matter. This is not the manner in which orders should be passed. Order of the sessions court as far as applications preferred by the present applicant are concerned deserve to be set aside. Accordingly, Criminal Application Nos. 118 of 2005 and 120 of 2005 are restored to the file of sessions Judge, Pandharpur, for being dealt with afresh on merits and in accordance with law after giving full opportunity to the applicant as well as prosecution. Learned Judge shall endeavour to dispose them of as expeditiously as possible.

(S.C.DHARMADHIKARI, J)